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Appl No. 10/714,229
Atty. Docket No. CM2711
Amdt. Dated July 3, 2006
Reply to Office Action of April 3, 2006
Customer No. 27752

REMARKS

Claims 1-15 are pending in the present application. No additional claims fee is believed to be due.

The Rejection under 35 U.S.C. §102(b) over Ouellette

Claims 1 and 2 have been rejected under 35 U.S.C. §102(b) as being anticipated by Ouellette, US Patent No. 6,295,993 (hereinafter "Ouellette"). Applicants respectfully traverse this rejection. Applicants' Claim 1 requires an implement for treating selected strands of hair with a composition, said implement comprising: a reservoir comprising a first opening and a second opening and *containing a composition capable of treating hair*; guide means capable of sliding in said reservoir, wherein said guide means comprises a body extending from said first opening to said second opening through the reservoir, pulling means protruding from said second opening for pulling said guide means at least partially out of the reservoir through said second opening, attaching means protruding from the first opening for attaching the selected strands of hair to said guide means so that when said guide means is pulled out of the reservoir through said second opening *the strands of hair are pulled in the reservoir through said first opening*.

Ouellette teaches an apparatus for rapidly bringing selected strands of hair, extending from a scalp, into a treatment tube into which a treatment solution can be introduced. The Ouellette reference teaches treatment tubes that are slidably mounted on the apparatus (see column 2, lines 21-26). As described in column 4, lines 9-54, in operation, the treatment tubes (17, 18) of Ouellette are slid over a guide tube (9). The treatment tubes are pushed off of the guide tube, and into close contact with the scalp, and the distal end of the hairs passes through the loop formed by the prongs (12) and are released into the treatment tubes. The distal end of the treatment tubes is pinched tightly so as to form a liquid tight seal around the swatch of hair inside. Treating liquid can then be dispensed from the container (7) and the proximal end of the tube pinched closed. Thus, it is the treatment tubes where the hair actually comes in contact with the treating liquid. Further, Ouellette teaches that the

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container does not even need to be employed. In that situation, the tubes are placed on the hair, and they can be filled with treating liquid from an external supply.

The Office Action states that Ouellette discloses a device comprising an elongate reservoir (7, 8, 9) having opposing first and second open ends and containing a composition for treating hair and a guide means (10) capable of sliding in the reservoir. Applicants submit that the reservoir of the present invention is not comparable to the container and guide tube (7, 8, 9) discussed in the Office Action. Claim 1 of the present invention requires that the *reservoir contains a composition capable of treating hair*; Claim 1 also requires that attaching means protrude from the first opening for attaching the selected strands of hair to said guide means so that when said guide means is pulled out of the reservoir through said second opening *the strands of hair are pulled in the reservoir through said first opening*. There is not one structure disclosed in Ouellette that can perform all of the functions of the reservoir claimed in the present invention. In Ouellette, it is the combination of the container, the guide tube, and the treatment tubes that perform a function similar to that of the reservoir in the present invention.

The container and guide tubes of Ouellette are clearly distinguishable from the reservoir of the present invention. The claims of the present invention require that *the strands of hair are pulled in the reservoir through said first opening*. In Ouellette, the hair is not pulled into the container and guide tubes, rather it is pulled into the treatment tubes. Further, the treatment tubes of Ouellette are distinct from the reservoir claimed in the present invention. The claims of the present invention require that the reservoir *contain a composition capable of treating hair*. The treatment tubes of Ouellette do not *contain* a composition as claimed in the present invention. Rather, the container of Ouellette contains the composition, and it is dispensed into the treatment tubes.

Thus, Applicants contend that the Ouellette reference does not anticipate Applicants' Claims 1-15. Therefore, Applicants contend that the present invention is novel in view of Ouellette and that the rejection should be withdrawn.

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The Rejection under 35 U.S.C. 103(a) over Sturdivant in view of Sanders

Claims 1-7, 14, and 15 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Sturdivant, US Patent No. 3,255,765 (hereinafter "Sturdivant") in view of Sanders, US Patent No. 2,839,066 (hereinafter "Sanders"). Applicants respectfully traverse this rejection, as there is no motivation to combine the Sturdivant and Sanders references, as required in MPEP 2143.01. Thus, the obviousness rejection given in the Office Action does not establish a *prima facie* case of obviousness. Therefore, Applicants contend that the claimed invention is unobvious and the rejection should be withdrawn.

There is no motivation to combine Sturdivant and Sanders. Sturdivant teaches hair curlers that clamp to the base of a lock of hair and automatically rolls the lock of hair into a curl. While the hair curlers discussed in Sturdivant have pocket members and extractors, there is no discussion of the application of compositions for treating hair, or the need for treatment of any kind. Sanders teaches end wraps impregnated with an oleaginous material for use in a chemical waving process. The end wraps discussed in Sanders are small square or rectangular pieces of paper (approximately 2"x3" as described in Example 1) that wrap the free ends of a hair tress about a curler. Thus, the end wraps are applied to the ends of hair, not the entire hair tress.

One skilled in the art would have no motivation to combine Sturdivant's teachings of hair curlers which are attached to a lock of hair and automatically curls into a roll position with Sanders' teachings of end wraps for use in a chemical waving process. Sturdivant teaches an improvement to conventional hair curlers. Sanders teaches the use of small pieces of substrate to aid in the chemical waving process. While both references may be similar in teaching improvements to hair care regimens, one skilled in the art would have no motivation to combine the Sturdivant teaching of hair curlers with the Sanders teaching of small pieces of fabric impregnated with a material to aid in chemical waving.

There is no motivation to combine the Sturdivant and Sanders references. Therefore, Applicants contend that the claimed invention is unobvious and that the rejection should be withdrawn.

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Conclusion

In view of the above, Applicants respectfully submit that each of the issues raised by the Office Action has been addressed. Reconsideration and allowance of each of the pending claims is respectfully requested.

Respectfully submitted,
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